Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Meredith T. Raney, Jr.,

Petitioner,

v.

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., and Patricia B. Windle,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Has the United States Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power because its decision may wrongly exonerate very influential people from massive personal civil liability in a closely related case and from possible life sentences for F.A.C.E. crimes?

Has the United States Court of Appeals so far departed from the accepted and usual course of judicial proceedings by allowing gross misuse by Appellees of the injunction approved by this Court in *Madsen* as to call for an exercise of this Court's supervisory power?

Has the United States Court of Appeals entered a decision in conflict with the rulings of the United States Supreme Court in abortion cases from *Roe* and *Doe* to *Stenberg* in which protection of the life and health of pregnant women considering abortions is of paramount concern?

Has the United States Court of Appeals entered a decision in conflict with the ruling of the United States Supreme Court in *Casey* that pregnant women considering abortion have the right to full and truthful information concerning the risks of abortion?

Has the United States Court of Appeals entered a decision in conflict with the ruling of the United States Supreme Court in *Schenck* providing for standards of conduct for pro-life counselors at abortion clinic entrances?

Has the United States Court of Appeals entered a decision in conflict with a ruling of the United States Supreme Court in *Madsen* which limited access to the buffer zone at 1564 Dixie Way, Melbourne, Florida to six named persons, three organizations and those persons acting in concert with them?

Has the United States Court of Appeals entered a decision in conflict with a ruling of the Florida Supreme Court in *Johnson v. Weiner* which provides that a business owner is liable for misuse of local police when the police action is procured, directly or indirectly, by the business owner?

Has the United States Court of Appeals entered a decision in conflict with an important decision entered by the U.S. Court of Appeals, Eighth Circuit, in *Dinwiddie*, which provided F.A.C.E. protection for a building superintendent in a large area around the abortion clinic?

Has the United States Court of Appeals entered a decision requiring the supervision of the United States Supreme Court because the Court of Appeals so far departed from the accepted and usual course of judicial proceedings by rewriting the F.A.C.E. statute in violation of Article I of the United States Constitution?

Has the United States Court of Appeals entered a decision requiring the supervision of the United States Supreme Court because the Court of Appeals so far departed from the accepted and usual course of judicial proceedings by depriving Meredith T. Raney, Jr. of equal protection under F.A.C.E.?

PARTIES TO THE PROCEEDING

"Petitioner"

Meredith T. Raney, Jr.

"Respondents"

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., and Patricia B. Windle

NOTE TO THE UNITED STATES SUPREME COURT CONCERNING PARTIES IN RELATED ELEVENTH CIRCUIT CASES:

Prospective Petitioners: Jane Roe, II of *Roe, II v. Aware Woman, et al.* U.S. Court of Appeals No.: 00-10231-DD, the F.A.C.E. action for forced abortion. Ray Sienkiewicz of *Sienkiewicz v. McDougall*, and *Sienkiewicz v. Hart, et al.*, U.S. Court of Appeals No's: 00-12634-II, 00-13805-II, and 00-14228-FF, F.A.C.E. actions for intimidating pro-life counselors with problems of judicial impropriety. Meredith T. Raney, Jr. in *Raney v. City of Melbourne* U.S. Court of Appeals No.: 00-11403-B. F.A.C.E. corollary to *Aware Woman.*

Prospective Respondents: Aware Woman Center for Choice, Inc., Patricia B. Windle and Edward W. Windle, Jr. in *Roe, II.* John McDougall in *Sienkiewicz v. McDougall* (1 and 2). Larry Hart, Janet Reno, William Clinton, Charles Wilson (of the Eleventh Circuit) and Jill Babyack in *Sienkiewicz v. Hart.* City of Melbourne, Florida in *Raney v. City of Melbourne.*

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Ninth Issue: The Petition should be granted

because the United States Court of Appeals entered a decision requiring the supervision of the United States Supreme Court since the Court of Appeals so far departed from the accepted and usual course of judicial proceedings by rewriting the F.A.C.E. statute in violation of Article I of the United States Constitution 15

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Petitioner, Meredith T. Raney, Jr., respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at *Raney v. Aware Woman Center For Choice, Inc.*, 224 F.3d 1266 (11th Cir. 2000) Appendix C. The order of the Court of Appeals denying the petition for rehearing *en banc* is reported at F.3d , Appendix D. The opinion of the District Court in *Raney v. Aware Woman Center For Choice, Inc.*, Case No.: 97-1197-CV-ORL-19B, is shown as Appendix A. The endorsed order of the District Court denying post-judgment relief is shown as Appendix B.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on August 30, 2000. The Court of Appeals denied a timely petition for rehearing *en banc* on November 6, 2000.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article 1 of the United States Constitution, which states in pertinent part:

Section 1. All legislative Powers herein

> granted shall be vested in a Congress of the United States . . .
> Section 8. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

This case involves the federal statute called Freedom of Access to Clinic Entrances Act, (F.A.C.E.) 18 U.S.C.§ 248, which states in pertinent part:

> (a) **Prohibited activities.** - Whoever -
> **(1)** by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (c) **Civil remedies.** -
> **(1) Right of action**.-
> **(A) In general.**-Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services . . .
>
> Article III, Section 2 of the United

(e) Definitions.- As used in this section:

(1) Facility.- The term "facility" includes a hospital, clinic, physicians office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(5) Reproductive health services.- The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

STATEMENT OF THE CASE

Meredith T. Raney, Jr. became active in the pro-life cause more than 10 years ago. Like many thousands of others in this cause, his first concern was protecting the life of the unborn child. He not only wrote the obligatory letters to the newspapers and politicians, he also started taking part in various street activities (which are defined and explained in his Complaint in the exhibits hereto). The focus of this activity initially had little to do with the specific needs of the individual pregnant young women.

With time, Mr. Raney experienced a change in his outlook. He became much more cognizant of the dilemmas and crises with which the pregnant girls were confronted. As a result, he completed a crisis pregnancy counseling course and reviewed considerable material about pregnancy and its termination. He still spent time on the street in the pro-life

cause; however, by the time the incidents described in this case occurred, he was concentrating on providing reproductive health service counseling and referral information to all those in need of this help at 1564 Dixie Way, Melbourne, Florida, the Aware Woman facility for abortions and adoptions.

While Mr. Raney's help was utilized by a great number of young women, his presence resulted in a reduced net income for the abortion clinic which, in turn, hired armed policemen stationed at the facility to threaten, intimidate and obstruct these counseling and referral services. These F.A.C.E. violations are the basis for the present legal action.

A. Background

The *Raney* case presents a sea change in the pro-life activities at abortion clinics. Utilizing the legal protection of F.A.C.E. and complying with all U.S. Supreme Court decisions and state, local and federal laws, trained pro-life counselors, seek to professionally offer love and help to desperate pregnant women in abortion facilities.

As will be shown in more detail in the related case of *Roe, II v. Aware Woman*(*supra*), women must have the services of such counselors in order to avoid forced abortions and other mortal dangers such as HIV / AIDS infections about which dangers the hired help inside the clinics can say nothing and keep their jobs.

Sienkiewicz v. McDougall (*supra*), and *Sienkiewicz v.Hart* (*supra*), will demonstrate how the highest officials of our federal government, in an unlawful effort to stop these counselors and protect the pocket books of the abortion industry, engaged in a nation-wide effort to prevent the pro-life counseling from providing F.A.C.E.-protected services at abortion clinic entrances. The resulting

tragedies, including death, have been horrific for untold numbers of girls and young women.

B. The Proceedings Below.

The *Raney* Complaint was filed in the Middle District of Florida in the fall of 1997, pursuant to 28 U.S.C. §1391(b), because the claim arose in that district and also because the Defendants reside in that district. Additionally, there was original jurisdiction in federal court under 28 U.S.C. §1343(a)(4) because this is a civil action to recover damages under an Act of Congress providing for the protection of civil rights.

Following more than a year of contentious motion exchanges, the case was about to be tried on Monday, March 1, 1999 before a jury in Orlando, Florida..

On the preceding Friday afternoon, District Judge Fawsett entered an order for summary judgment, among other things, based on her *sua sponte* motion. Entry of the final judgment was delayed pending an interlocutory appeal filed by the Defendants/Appellees which was resolved in Mr. Raney's favor.

Motions for post-judgment relief were denied by a single endorsed order. Timely Notice of Appeal was filed.

Following an unsuccessful appeal to the U.S. Court of Appeals, Eleventh Circuit, this timely petition for writ of certiorari is being brought.

REASONS FOR GRANTING THE WRIT

I

THE UNITED STATES COURT OF APPEALS HAS DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER BECAUSE ITS DECISION MAY WRONGLY EXONERATE INFLUENTIAL PERSONS FROM THE MASSIVE PERSONAL CIVIL LIABILITY IN A CLOSELY RELATED CASE AND FROM POSSIBLE LIFE SENTENCES FOR F.A.C.E. CRIMES.

As replete as the decision of the Court of Appeals is with numerous errors, justice demands that the Supreme Court exercise its supervisory powers and review the decision at hand.

The U.S. Court of Appeals has reworked the law of the case and has apparently recreated a new set of facts more to its liking. It has ruled that Meredith T. Raney, Jr. must fail in his F.A.C.E. action because he did not show that the abortion clinic controlled the police, that he was not in the facility, and that he was an unpaid volunteer.

The Court of Appeals cites as its sole authority Restatement (Second) of Agency § 1(1)(1958): "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."

The Court of Appeals must have overlooked the introductory note preceding the above-stated definition which

states: "The brevity of a definition necessarily makes it an incomplete and inaccurate statement. . . . The meanings assigned are not always the same as the meanings given to the words by the courts. . . ."

There was as much "fiduciary relation" between the abortion clinic and its police - employees as there would be between a junkyard owner and his guard dogs. All the police had to do was come when called, leave when told to, bring their guns and other weapons with them, stay on the premises, threaten all whom the clinic wanted threatened and refrain from providing any services to the public or the City of Melbourne, such as enforcing local or state laws.

The record of this case shows that all of these activities were controlled by the Windles. The Court of Appeals, for whatever reason, has chosen to restate the plain facts of the case.

The Restatement (Second) of Agency § 2(2) contains a better description of the police - employees as "servants": "A servant is an agent employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master." And so far as liability is concerned, it is stated as §219(1): "A master is subject to liability for the torts of his servants committed while acting in the scope of their employment." So too should the Windles be liable under F.A.C.E. for the threats and intimidation which they sponsored.

Black's Law Dictionary, Seventh Edition, says it even better at page 64: an "agent" is "one who is authorized to act for or in place of another". There is no doubt: Mr. Raney is correct about the Appellees' liability.

The Court of Appeals also summarily determines that Meredith T. Raney, Jr. was not seeking to provide services *in a facility* as required by 18 U.S.C. §248(c)(1)(A) even though this term "includes the building or structure in which the facility is located" 18 U.S.C. §248(e)(1). This was patently wrong.

Black's Law Dictionary, Seventh Edition, defines "structure": "Any construction, production or piece of work artificially built up or composed of parts purposefully joined together." The facility at 1564 Dixie Way, Melbourne, Florida was shown by Mr. Raney to include the walled portion around the clinic and the parking lot and the sidewalks in the *Madsen* buffer zone, all of which meet the definition of "structure". Black's also contains a definition for "building line": "A boundary drawn along the curb or the edge of a municipality's sidewalks to establish how far a building must be set away from the street to maintain a uniform appearance". Again, the counselor was *in the facility*. The record is abundantly clear on this point.

Finally, the Court of Appeals refuses Meredith T. Raney, Jr. protection under F.A.C.E. because he is a volunteer. It boggles the mind how this status would prevent one from providing written referral information to the desperate people needing such help.

This Court when deciding *Roe v. Wade*, 35 L.Ed. 2d 147(1973), reviewed with approval the recommendations of the American Public Health Association: "A wide range of individuals from appropriately trained, sympathetic volunteers to highly skilled physicians may qualify as abortion counselors". (Page 172) Emphasis added. Obviously, the extensive training and experience which this counselor has should not disqualify from F.A.C.E. protection because he is not paid for these services.

It is most unfortunate that the Court of Appeals would ignore the record which details Mr. Raney's credentials. The obvious beneficiaries are the Defendants/Appellees of a related case in the Eleventh Circuit. The victims are the millions of pregnant women who are deprived by this present errant decision of the help they so desperately need in their times of crisis.

II

THE UNITED STATES COURT OF APPEALS HAS DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY ALLOWING GROSS MISUSE BY APPELLEES OF THE INJUNCTION APPROVED BY THE UNITED STATES SUPREME COURT IN ITS *MADSEN* DECISION.

The dissent in *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994), contains an ominous warning at page 2549:

> "The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need . . . What was true of a misguided military order is true of a misguided trial-court injunction. And the Court has left a powerful loaded weapon lying about today."

The majority of this Court was reasonably certain that the Windles could be trusted not to misuse a powerful private injunction. They were wrong.

The lone counselor was threatened and dragged away from a public *forum* area designated as such by the United States Supreme Court by hired gunmen working for the Windles under the pretext of enforcing the *Madsen* injunction. This is exactly what Justice Scalia had feared. Instead of

chastising the Windles for their infamy, the Court of Appeals looked the other way. The United States Supreme Court should not allow its honored trust to be so grossly abused.

III

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE RULING OF THE UNITED STATES SUPREME COURT IN ABORTION CASES FROM *ROE* AND *DOE* TO *STENBERG* IN WHICH PROTECTION OF THE LIFE AND HEALTH OF PREGNANT WOMEN CONSIDERING ABORTIONS IS OF PARAMOUNT CONCERN.

Like a rock, the United States Supreme Court has consistently decreed that the preservation of the lives and health of pregnant women were of the Court's utmost concern. So said the Court in *Roe v. Wade, (supra), Doe v. Bolton*, 35 L. Ed. 2d 201 (1973) and last year, in *Stenberg v. Carhart*, 147 L.Ed. 2d 743 (2000).

But who will warn pregnant women about the specific dangers at specific abortion clinics, dangers which include rape on the table, forced abortion, HIV-AIDS infections and many instances of unnecessary injuries or death? Certainly no one hired by the particular abortion clinic can tell women the full truth and still remain on the payroll. And the Court of Appeals has refused to protect the trained referral counselor who would warn them of these perils.

If the dangers to life and health at a particular abortion clinic are not revealed to a woman traveling hundreds of miles to an unknown community, then the Court of Appeals is expecting women to needlessly risk their lives and health, contrary to its many past rulings of the United States Supreme Court.

IV

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE RULING OF THE UNITED STATES SUPREME COURT IN *CASEY* THAT PREGNANT WOMEN CONSIDERING ABORTION HAVE THE RIGHT TO FULL AND TRUTHFUL INFORMATION CONCERNING THE RISKS OF ABORTION.

Those counselors who will speak the truth to women concerning abortion must be free of economic pressure from the abortion clinic. They must be independent and protected under F.A.C.E. from the threats and intimidation from abortion clinic personnel, including hired gunmen even if they are wearing badges.

If the decision of *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992) is to have any real application, there must be localized or clinic-specific truthful information available to every customer of every abortion clinic. The danger to the life and health of pregnant young women vary greatly from clinic to clinic. The risks are never exactly the same. Also the local resources vary from neighborhood to neighborhood. Each clinic must have independent counselors out front who know the territory. The Court of Appeals decision runs counter to this life-and-death need and so must be reviewed.

V

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE RULING OF THE UNITED STATES SUPREME COURT IN *SCHENCK* PROVIDING FOR STANDARDS OF CONDUCT FOR PRO-LIFE COUNSELORS AT ABORTION CLINIC ENTRANCES.

The only personnel stationed at abortion clinics for whom standards of behavior have been approved are the pro-life counselors whose behavior at abortion clinic entrances was reviewed by the United States Supreme Court in *Schenck v. Pro Choice Network*, 519 U.S. 357(1997), where the Court allowed two pro-life counselors to engage in non-threatening conversations at the entrance to certain abortion clinics, so long as they did not obstruct ingress or egress.

Unlike the Supreme Court, the Court of Appeals is unaware of the enormous consequences to the young women and girls brought to abortion clinics; their lives and health are at stake, the consequences of wrong decisions may be irreversible. The recent decision in *Hill v. Colorado*, 147 L.Ed. 2d 597 (2000), has emphasized this Court's approval of assistance to pregnant girls and young women by pro-life referral counselors standing next to the doorway of abortion clinics.

The Court of Appeals believes that the pro-life counselors are no different from protesters and demonstrators who wish only to express their own ideas and opinions. To the contrary, the counselors seek a helping relationship which requires a private, sometimes whispered, conversation. "My boyfriend's got a gun and he's going to kill me if I don't get an abortion. Can you help me?" Or, "I've heard that a woman died here last week. What happened?" Or, "My friend was raped at an abortion clinic. Will that happen to me at this place?" Or, when exiting, "I feel so guilty. I'm going to kill myself if I don't get help. Where should I go?" These are not the kinds of communications which can be had across any distance more than a foot or two and still protect the privacy, and often the life, of the young woman who is in such danger or dire need.

Contrary to the decision in the Court of Appeals, there is in place a code of behavior for counselors such as Meredith

Raney. An examination of the record, especially the video tapes, shows that Mr. Raney complied with the standards set by this Court. A review of the appellate decision is necessary so that a grave injustice to millions of threatened young women can be erased.

VI

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH A RULING OF THE UNITED STATES SUPREME COURT IN *MADSEN* WHICH LIMITED ACCESS TO THE BUFFER ZONE AT 1564 DIXIE WAY, MELBOURNE, FLORIDA TO SIX NAMED PERSONS, THREE ORGANIZATIONS AND THOSE PERSONS ACTING IN CONCERT WITH THEM.

This Court has specified in great detail who could and could not be on the sidewalk at the abortion clinic at 1564 Dixie Way, Melbourne, Florida.

Mr. Raney was not excluded by name. In the pictures of the incidents in question, he is clearly providing the counseling and referral services by himself. He deserved federal protection under F.A.C.E. and not threats of violence and obstruction for the spurious charges that he was violating the *Madsen* injunction. Certainly the counselor is pro-life, but he is not serving pregnant women and providing for their needs unless he can first discuss those necessities with them.

In effect, the Court of Appeals has denied this assistance to numerous pregnant young women. The Supreme Court should return to pregnant women all possible assistance from pro-life counselors in order to protect their health and lives.

VII

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH A RULING OF THE FLORIDA SUPREME COURT IN *JOHNSON V. WEINER* WHICH PROVIDES THAT A BUSINESS OWNER IS LIABLE FOR MISUSE OF LOCAL POLICE WHEN THE POLICE ACTION IS PROCURED, DIRECTLY OR INDIRECTLY, BY THE BUSINESS OWNER.

Many years before the abortion clinic was located in Melbourne, Florida, the Florida Supreme Court declared that a business owner would be liable for harm done by local police, whose actions had been procured directly or indirectly by the business person. *Johnson v. Weiner*, 19 So.2d 699 (Supreme Court of Florida, 1944).

This Florida Supreme Court decision had been utilized by the U.S. District Court, Middle District of Florida, as the legal standard for determining tort liability in cases involving misuse by a business of the local police. *Gilbert v. Sears, Roebuck and Co.*, 899 F.Supp. 597 (M.D. Fla. 1995).

The decision of the Court of Appeals is at odds with the time-honored decision in *Johnson* (*supra*) and so this most important conflict should be reviewed by the United States Supreme Court.

VIII

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH AN IMPORTANT DECISION ENTERED BY THE U.S. COURT OF APPEALS, EIGHTH CIRCUIT, IN *DINWIDDIE*, WHICH PROVIDED F.A.C.E. PROTECTION FOR A BUILDING SUPERINTENDENT IN A LARGE AREA AROUND THE ABORTION CLINIC.

An important federal question was answered by the U.S. Court of Appeals in *U.S. v. Dinwiddie* 76 F.3d 913 (8th Cir. 1996) when the Court decided that the janitor or building superintendent was protected under F.A.C.E. because he played a role in the operation of the abortion business. The decision of the Court of Appeals, Eleventh Circuit, would deny F.A.C.E. protection to such a person because apparently he was not a trained professional.

Another important federal question answered in the *Dinwiddie* (*supra*) case was the extent of protection to be afforded an abortion clinic outwards from the entrance. In *Dinwiddie* (*supra*), the distance was 500 feet. In the present case, there would have been no protection.

This obvious conflict between the two appellate courts on such an important issue of national consequence should be resolved by the United States Supreme Court.

IX

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION REQUIRING THE SUPERVISION OF THE UNITED STATES SUPREME COURT BECAUSE THE COURT OF APPEALS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY REWRITING THE F.A.C.E. STATUTE IN VIOLATION OF ARTICLE I OF THE UNITED STATES CONSTITUTION.

The U.S. Court of Appeals has completely rewritten F.A.C.E. to suit its own purposes. It has added the following changes and requirements to 18 U.S.C. §248:

1. " ATTACHED"
2. "CREDENTIALED"

3. "HEALTHCARE"
4. "PROFESSIONALS"
5. "RECOGNIZED"
6. "TRAINED"
7. "UNREGULATED"
8. "VOLUNTEER"

The drafting and redrafting of federal legislation is reserved to the Congress. Article I, Sections 1 and 8, of the U.S. Constitution is most clear on this point. The United States Supreme Court should exercise its supervisory authority in order to rectify the horrible injustice done to pregnant girls and young women by the Court of Appeals' decision.

X

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION REQUIRING THE SUPERVISION OF THE UNITED STATES SUPREME COURT BECAUSE THE COURT OF APPEALS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY DEPRIVING MEREDITH T. RANEY, JR. OF EQUAL PROTECTION UNDER F.A.C.E.

The Court of Appeals was wrong to deprive the counselor of F.A.C.E. protection because of his volunteer status. The record shows that he has sufficient training and was acting in a law abiding manner at the time that he was threatened and obstructed at 1564 Dixie Way, Melbourne, Florida. Without the presence of a pro-life counselor familiar with the operation of the clinic and the local resources such as crisis pregnancy centers and shelters for abused women, there can be no truthful and non-misleading information provided to those coming to and going from the abortion clinic.

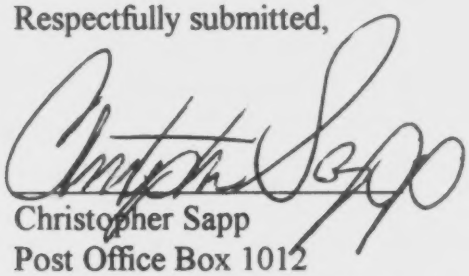
For the Court of Appeals to discriminate against this counselor as they have done is in violation of the standards approved in *Police Department Of The City Of Chicago v. Mosley*, 33 L.Ed. 2d 212 (1972). In that case, this Court stated: "As in all equal protection cases, however, the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment." (page 216).

Not only is there no coherent reason for discriminating against volunteer services, it is in direct opposition to all that the United States Supreme Court has written about its concern for the life and health of pregnant young women to deprive them of the help and information they need for what may be the most important decision that they will ever make.

CONCLUSION

Meredith T. Raney, Jr. respectfully requests that this Court grant a writ of certiorari in order to protect the millions of pregnant girls and young women who so desperately need truthful information not only about the risks and dangers at each individual abortion clinic but also the resources and help available to them in that specific neighborhood. The Court of Appeals decision has gone a long way in the transformation of Abortion from a right to an obligation. The Halls of Justice must be forever free from the blood of desperate girls and young women whose lives and health are endangered by this awful decision of the Court of Appeals. The United States Supreme Court must review this judicial tragedy.

Respectfully submitted,



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APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 97-1197-CV-ORL-19B
(Filed February 26, 1999)

MEREDITH T. RANEY, JR.,
Plaintiff,
v.

AWARE WOMAN CENTER FOR CHOICE, INC., a Florida corporation, EDWARD W. WINDLE, JR., and PATRICIA B. WINDLE,
Defendants.

ORDER

This cause came before the Court on the following matters:

1) The Court's Notice to both parties that it is considering sua sponte whether summary judgment should be granted for the Defendants on the Plaintiff's Complaint (Doc. No. 121, filed February 1, 1999); AWCC Memorandum in Further Support of Motion for Summary Judgment (Doc. 122, filed February 8, 1999); Plaintiff's Memorandum Requested by the District Judge in that Order Dated February 1, 1999 (Doc. No. 128, filed February 22, 1999).

2) Defendants' Application for Stay (Doc. No. 126,

filed February 18, 1999) and Plaintiff's Response to Defendants' Application for Stay (Doc. No. 134, filed February 25, 1999).

3) Motion for Judgment on the Pleadings in Favor of the Plaintiff with Memorandum in Support Thereof (Doc. No. 116, filed January 15, 1999) and Opposition Memorandum of AWCC Defendants to Motion for Judgment on Pleadings (Doc. No. 120, filed January 28, 1999).

4) Additional Motion for Judgment on the Pleadings in Favor of the Plaintiff Together with Memorandum in Support Thereof (Doc. No. 118, filed January 20, 1999).

5) Objections to the Filing or Use of the "Deposition" of Keith Chandler and the "Deposition" of S.W. Smith (Doc. No. 132, filed February 23, 1999).

6) Third-Party Defendants' Dispositive Motion to Dismiss Third-Party Complaint (Doc. No. 91, filed November 18, 1998) and AWCC Opposition to Sphere Drake/Odyssey Motions to Dismiss Third Party Complaint and to Vacate Milburn Order (Doc. No. 96, filed December 9, 1998).

7) Third-Party Defendants' Motion to Vacate or for Relief from Order of September 16, 1998 (Doc. No. 92, filed November 18, 1998) and AWCC Opposition to Sphere Drake/Odyssey Motions to Dismiss Third Party Complaint and to Vacate Milburn Order (Doc. No. 96, filed December 9, 1998).

8) AWCC Insured Motion for Partial Summary Judgment ON Obligation of Insurers to Cover and Indemnify, and Prima Facie Showing of Insurer bad Faith - Dispositive Motion as to Law of Case on Liability of Insurers (Doc. No. 77, filed September 15, 1998); Suggestion of Default by

Insurance Third Party Defendants as to Motion of AWCC for Partial Summary Judgment (Doc. No. 89, filed November 16, 1998); and AWCC Opposition to Sphere Drake/Odyssey Motions to Dismiss Third Party Complaint and to Vacate Milburn Order (Doc. No. 96, filed December 9, 1998).

9) Plaintiff's Motion to Conduct Limited Discovery (Doc. No. 135, filed February 25, 1999) and Plaintiff's Memorandum in Support of Motion to Conduct Limited Discovery (Doc. No. 136, filed February 25, 1999).

10) Plaintiff's Motion in Limine and Memorandum in Support (Doc. No. 137, filed February 25, 1999).

11) Plaintiff's Renewed Motion for Judgment on the Pleadings and Memorandum in Support (Doc. No. 138, filed February 25, 1999).

BACKGROUND

Plaintiff, Meredith T. Raney, Jr., has brought this suit against Defendants Aware Woman Center For Choice, Inc. ("Aware Woman Center"), Edward W. Windle, Jr., and Patricia B. Windle for violation of the Freedom of Access to Clinic Entrances Act of 1994 ("FACE"), 18 U.S.C. § 248. Plaintiff asserts that he was unlawfully interfered with, threatened, and physically prevented from providing reproductive health services at a facility performing such services by the Melbourne City Police, who were allegedly acting as Defendants' agents. On three separate occasions Plaintiff contends that he was physically removed from the reproductive health services facility after having been threatened and intimidated by Melbourne City Police.

A. Summary Judgment

In the Court's February 1, 1999 Order, the Court notified both parties that it was considering sua sponte whether to grant summary judgment for the Defendants on the issue of whether the police were acting as agents for the Defendants when the Plaintiff was arrested. See Massey v. Congressional Life Ins. Co., 116 F.3d 1414, 1417 (11th Cir. 1997). The Court instructed the Defendants to file a brief and any supporting evidence with respect to the Court's sua sponte consideration of summary judgment by February 10, 1999. The Court instructed the Plaintiff to file a brief and any supporting evidence in response by February 22, 1999. Both parties have filed such briefs and supporting evidence.

Before determining whether to grant summary judgment, the Court first considers whether it has jurisdiction to consider this issue because the Defendants appealed the Court's December 16, 1999 Order under the collateral order doctrine. After a careful analysis, the Court determines that it does have such jurisdiction. However, in an abundance of caution, the Court will defer entering judgment on this order until after the interlocutory appeal is concluded.

It appears that the Court has jurisdiction because a district court retains jurisdiction where a party appeals a non-appealable order. See e.g. United States v. Hitchmon, 602 F.2d 689, 694 (5th Cir. 1979) ("[w]e are persuaded that filing a notice of appeal from a non-appealable should not divest the district court of jurisdiction"). In this case, it appears that the December 16, 1999 Order was a non-appealable order. The December 16, 1999 Order considered whether the Defendants' Motion for Summary Judgment should be granted based on Younger abstention grounds or the Rooker-Feldman doctrine. Appellate courts have declined to exercise jurisdiction under the collateral order doctrine for appeals of district court orders that involved these issues. See Bryant v. Sylvester, 57 F.3d 308, 316 (3d Cir. 1995), vacated on other grounds, 516 U.S.

1105 (1996) (holding that denial of motion to dismiss on Rooker-Feldman grounds is not immediately appealable under the collateral order doctrine); Confederated Salish v. Simonich, 29 F. 3d 1398 (9th Cir. 1994) (holding that an order denying a motion to abstain under the Younger abstention grounds was not immediately appealable under the collateral order doctrine); Coleman by Lee v. Stanziani, 735 F.2 118, 119-20 (3d Cir. 1984) (holding that the denial of a motion to dismiss on Younger Abstention grounds was not immediately appealable under the collateral order doctrine).[1]

Accordingly, the Court now examines whether it should grant summary judgment for the Defendants. In his Complaint, the Plaintiff alleges that the Defendants violated 18 U.S.C. § 248 when he "was unlawfully interfered with, threatened, and physically prevented from providing reproductive health services by the Melbourne City Police who, as agents of and taking direction from the Defendants, threatened Plaintiff with physical removal from the facility and then physically took Plaintiff away from the facility." (Doc. No. 1 at ¶ 15, filed October 1, 1997). Because the record does not reflect any colorable evidence that the Melbourne City Police were acting as agents of the Defendants, the Court finds

[1]However, the Court notes that if the December 16, 1998 Order is an appealable order, then it is less clear whether the Court should proceed. Cf. 15A Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3911 (1991) (indicating a trial court may undertake further proceedings following collateral order appeals); Taylor v. Sterrett, 640 F.2d 663, 667-68 (5th Cir. Unit A 1981) (indicating that where appeal is allowed from an interlocutory order that the district court may only proceed with matters not involved in the appeal); United States v. Neumann, 556 F.2d 1218, 1219 (5th Cir. 1977) (dismissing a collateral order appeal as moot as noted above, the Court will defer entering judgment on this order until the interlocutory appeal is concluded.

that summary judgment is warranted.

In order to establish the existence of an agency relationship, the record must reflect some evidence that the alleged principal had the right to control the behavior of the alleged agent. See Restatement (Second) of Agency § 1 (1958) ("[a]gency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act"); see also General Building Contractors Ass'n, Inc. v. Pennsylvania, 458 U.S. 375, 392 (1982); State v. American Tobacco Co., 707 So.2 851, 854 (Fla. Dist. Ct. App. 1998). Based on this requirement, a number of courts have held that police officers were not agents of defendants as a matter of law where the record did not reflect evidence that the defendants controlled the actions of the police officers. See Johnston v. Warren County Fair Ass'n, Inc., 110 F.3d 36, 38 (8th Cir. 1996) (finding that police officers were not agents of the defendant where the plaintiff did not contend that the defendant hired the police department to perform security work and where the plaintiff did not offer evidence that the defendant's actually controlled the police officers); McGeorge v. Continental Airlines, Inc., 871 F.2d 952, 955 (10th Cir. 1989) (affirming dismissal against defendant where the trial court "ruled that plaintiff could not show defendant had control over the officer, and without control the officer could not have been [the defendant's] agent") Hingson v. Pacific Southwest Airlines, 743 F.2d 1408, 1416 (9th Cir. 1984) (affirming directed verdicts where there was no evidence that the defendant had the right to control the police officers).

In this case, the record reflects evidence that the Defendants notified the Melbourne City Police when abortions were being performed, that the police patrolled the area on such occasions, and that the Defendants compensated them.

(Doc. No. 129, filed February 22, 1999; Doc. No. 130, filed February 22, 1999; Doc. No. 131, filed February 22, 1999). Also, the Defendants stated in their Motion to Dismiss that they notified the police that the Plaintiff was violating the injunction. (Doc. No. 128; Doc. No. 8, filed February 22, 1999). There is undisputed evidence that the police independently observed the Plaintiff violated the injunction before arresting him. (Doc. No. 122, Exh. 1). Such evidence when viewed in a light most favorable to the Plaintiff is not sufficient for a reasonable jury to find that the Defendants controlled the Melbourne City Police. Thus, the Court finds that a reasonable jury could not find that the Melbourne City Police were agents of the Defendants. See Johnston, 110 F.3d at 38 (finding as a matter of law that the police officers' routine patrolling of the fair was insufficient to create an agency relationship); McGeorge, 871 F.2d at 955 (finding as a matter of law that police officers were not agents of the defendant where the defendant summoned the officers); Hingson 743 F.2d at 1416 (finding as a matter of law that police officers were not agents of defendant airline where airline requested police assistance); Mahon v. City of Bethlehem, 895 F.Supp. 310, 312 (E.D. Pa. 1995) (finding that police officers were not agents of the defendant even though the police were paid and the police enforced some of the defendant's rules where the defendant did not have discretion over enforcement decisions); Leach v. Penn-Mar Merchants Ass'n, 308 A.2d 446, 450 (Md. Ct. App. 1979) (finding as a matter of law in a Section 1983 action that the defendant did not act in concert with the police where the police conducted their own investigation).

Accordingly, the Court grants summary judgment for the Defendant on the Plaintiff's Complaint.

B. Plaintiff's Motions For Judgment on the Pleadings

Plaintiff has filed two motions for judgment on the pleadings because the Defendants allegedly did not comply with the Court's Case Management and Scheduling Order. These motions are denied.

C. Third-Party Defendant's Motion to Dismiss Third Party Complaint

Defendants filed a Third Party Complaint against Third Party Defendants Sphere Drake Insurance Company PLC and Westco Claims Management Company, Inc. for indemnification.

Third Party Defendants have moved to dismiss for lack of subject matter jurisdiction because the Third Party Complaint fails to properly allege diversity of citizenship. "When jurisdiction depends on citizenship, citizenship should be 'distinctly and affirmatively alleged.'" McGovern v. American Airlines, Inc., 511 F. 2d 653, 654 (5th Cir. 1975). A corporation is deemed to be a citizen of any state in which it is incorporated and any state where it has its principal place of business. See 28 U.S.C. 1332 (c)(1). The Third Party Complaint fails to allege the principal place of business or the state of incorporation of either of the Third Party Defendants. (Doc. No. 75, filed August 31, 1998). Thus, the Court cannot exercise subject matter jurisdiction based on diversity of citizenship. See Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994); McGovern, 511 F.2d at 654; Delome v. Union Barge Co., 444 F.2d 225, 233 (5th Cir. 1971).

The Court also declines to exercise supplemental jurisdiction over the Third Party Complaint. The Court may decline to exercise supplemental jurisdiction over a claim if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367 (c)(3). "Where § 1367 (c) applies, considerations of judicial economy, convenience, fairness, and comity may influence the court's discretion to

exercise supplemental jurisdiction." See Baggett v. First National Bank of Gainesville, 117 F.3d 1342, 1353 (11th Cir. 1997); see also Nobles v. Alabama Christian Academy, 917 F.Supp. 786, 790 (M.D. Ala. 1996). The state law questions involved in this case should be decided by a state court. See Baggett, 117 F.3d 1353. This is especially true because summary judgment will be granted on the Plaintiff's Complaint before trial. See id.[2] Thus, the Third Party Complaint is dismissed without prejudice.

CONCLUSION

Based on the foregoing, the Court rules as follows:

1) Summary judgment is **GRANTED** sua sponte in favor of the Defendants on Count I, II, and III of the Plaintiff's Complaint (Doc. No. 1). However, the Court defers entering judgment until the conclusion of the interlocutory appeal. Thus, the Clerk is directed not to enter judgment until the interlocutory appeal is concluded.

2) Because the Defendants have voluntarily dismissed their counterclaims (Doc. No. 106), a trial is not necessary in this case.

3) Defendants' Application for a Stay (Doc. No. 126) is **DENIED AS MOOT**.

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[2]The Court notes that the outcome of the interlocutory appeal does not effect this determination. If the Defendants are successful on their interlocutory appeal, then the Plaintiff's Complaint will be dismissed on those grounds. If the Defendants are unsuccessful on their interlocutory appeal, then summary judgment will be entered on the Plaintiff's Complaint.

4) The Motion for Judgment on the Pleadings in Favor of the Plaintiff (Doc. No. 116) is **DENIED**.

5) The Additional Motion for Judgment on the Pleadings in Favor of the Plaintiff (Doc. No. 118) is **DENIED**.

6) The Objections to the Filing or Use of the "Deposition" of Keith Chandler and the "Deposition" of S.W. Smith (Doc. No. 132) are **DENIED AS MOOT**. The Court did not rely on these depositions in deciding whether to grant summary judgment.

7) Third-Party Defendants' Dispositive Motion to Dismiss Third-Party Complaint (Doc. No. 91) is **GRANTED IN PART**. The Third Party Complaint (Doc. No. 75) is **DISMISSED WITHOUT PREJUDICE**. The Third Party Plaintiffs shall have ten (10) days from the date that the mandate of the Eleventh Circuit is issued with reference to the current appellate proceedings to file an amended pleading.

8) Third-Party Defendants' Motion to Vacate or for Relief from Order of September 16, 1998 (Doc. No. 92) is **DENIED AS MOOT**.

9) AWCC Insured Motion for Partial Summary Judgment on Obligation of Insurers to Cover and Indemnify, and Prima Facie Showing of Insurer Bad Faith (Doc. No. 77) is **DENIED AS MOOT**.

10) Plaintiff's Motion to Conduct Limited Discovery (Doc. No. 135) is **DENIED AS MOOT**.

11) Plaintiff's Motion in Limine (Doc. No. 137) is **DENIED AS MOOT**.

12) Plaintiff's Renewed Motion for Judgment on the

Pleadings (Doc. No. 138) is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 26th day of February, 1999.

/s/
PATRICIA C. FAWSETT
UNITED STATES
DISTRICT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MEREDITH T. RANEY, JR.,
Plaintiff,

v. **CASE NO.: 97-1197-CIV-ORL-19B**

AWARE WOMAN CENTER FOR CHOICE, INC., a Florida corporation, EDWARD W. WINDLE, JR., and PATRICIA B. WINDLE,
Defendant.
_____/

MOTION TO ALTER OR AMEND JUDGMENT AND MOTION FOR RELIEF FROM JUDGMENT AND MEMORANDUM IN SUPPORT OF EACH MOTION

MOTION TO ALTER OR AMEND JUDGMENT

Meredith T. Raney, Jr., the Plaintiff by and . . . .

DENIED and SO ORDERED this

13th day of September, 1999

/s/
Patricia C. Fawsett
United States District Judge
(Filed: Aug. 23, 1999 AM 9:45)

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

(Filed August 30, 2000)

No. 99-14122

D. C. Docket No. 97-01197-CIV-ORL-19

MEREDITH T. RANEY, JR.,

Plaintiff-Appellant,

versus

AWARE WOMAN CENTER FOR CHOICE, INC. a Florida Corporation, EDWARD W. WINDLE, JR., and PATRICIA B. WINDLE, et al.,

Defendants-Appellants.

Appeal from the United States District Court for the Middle District of Florida

(August 30, 2000)

Before BIRCH, CARNES and BARKETT, Circuit Judges

PER CURIAM:

Meredith T. Raney, Jr. appeals from the grant of summary judgment to Aware Woman Center for Choice, Inc. (the "Woman Center"), Edward W. Windle, Jr. and Patricia Windle (collectively "Defendants") on his claim brought pursuant to the Freedom of Access to Clinic Entrances Act, 18 U.S.C. §248 (2000) (the FACE Act"), which guarantees

freedom of access to the entrances of reproductive health facilities. Raney also appeals from the denial of his two post-judgment motions to alter or amend the judgment. We affirm.

On three occasions, police officers in the city of Melbourne physically removed Raney from the entrance to the Woman Center and charges him with having violated a state court injunction, upheld in Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994) (the "Madsen injunction"), that prohibits anti-abortion protesters from entering a specified 36-foot buffer zone in front of the Woman Center. In his Complaint, Raney alleged that the police officers, as agents of the Defendants, prevented him from providing counseling services to women and men as they were entering and leaving the Woman Center and thus violated his rights, protected under the FACE Act. The district court, finding that Raney could establish no factual basis for his claim that the city police were agents of the Defendants, dismissed the Complaint. The district court also twice denied Raney's motions to alter or amend the judgment, through which he sought to introduce additional deposition testimony in support of his agency claim.

We review de novo the district court's order granting summary judgment, viewing the record and all its inferences in favor of the nonmoving party. See Arrington v. Cobb County, 139 F.3d 865, 871 (11th Cir. 1998). Summary judgment is proper of there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Irby v. Bittick, 44 F.3d 949, 953 (11th Cir. 1995) (citing Fed.R.Civ.P.56(c). We review a district court's denials of motions to alter or amend a judgment for abuse of discretion. Mays v. U.S. Postal Service, 122 F.3d 43, 46 (11th Cir. 1997).

On appeal, Raney first reasserts his claim that the city police, in enforcing the Madsen injunction, acted as agents of the Defendants. We have reviewed the record, and we agree

with the district court that the affidavits that Raney has produced do not support his agency claim. "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." Restatement (Second) of Agency § 1(1)(1958). The affidavits submitted in support of Raney's claim establish only that city police were deployed to enforce the Madsen injunction on days when abortion procedures were performed at the Woman Center. While the record indicates that the Defendants cooperated with the police and notified them when the Woman Center's clients and employees would need protection, it does not suggest that the police were subject to the Defendants' control. Accordingly, we find that the district court did not err in awarding the Defendants summary judgment on the ground that Raney could not show that the police acted as the Defendant's agents.

In addition, because Raney cannot state a cause of action under the FACE Act, we also find that the district court did not abuse its discretion in denying Raney's post-judgment motions to amend the judgment. A FACE Act action may be brought "only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services *in a facility* that provides reproductive health services. . . ." 18 U.S.C. §248(c)(1)(A) (emphasis added). The statute defines "facility" to include "a hospital, clinic, physicians office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located." 18 U.S.C.§248(e)(1). The "reproductive health services" protected under the statute must be provided "in a hospital, clinic, physicians office, or other facility . . ."18 U.S.C.§248(e)(5).

By requiring that the person bringing a FACE action be seeking or providing reproductive health services in a facility,

Congress recognized the difference between trained professionals who work in credentialed facilities and unregulated volunteer counselors who are not attached to recognized providers of reproductive healthcare. On each of the three occasions when Raney was arrested for violating the Madsen injunction, he was standing on a sidewalk outside of the Woman Center clinic. He therefore can claim neither that he was in a facility nor that he was offering the type of reproductive health services to which the FACE Act protects access.[1]

Accordingly, the order of the district court is AFFIRMED.

[1]Because we find that Raney cannot bring a cause of action under the FACE Act, we need not determine whether he qualifies as a "counselor" under the FACE Act.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

(Filed November 6, 2000)

No. 99-14122-II

MEREDITH T. RANEY, JR.
Plaintiff-Appellant

versus

AWARE WOMAN CENTER FOR CHOICE, INC.
a Florida Corporation
EDWARD W. WINDLE, JR.,
PATRICIA B. WINDLE,
JOHN DOES 1-X
JANE DOES, 1-X, et al,
Defendants-Appellees.

On appeal from the United States District Court for the
Middle District of Florida

ON PETITION FOR REHEARING AND PETITION(S)
AND REHEARING EN BANC

Before: BIRCH, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing

en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5) the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT.

/s/_____
Rosemary Barkett
UNITED STATES CIRCUIT JUDGE

(2)

Supreme Court, U.S.
FILED

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No. 00-1268

IN THE

Supreme Court of the United States

MEREDITH T. RANEY,

Petitioner,

v.

AWARE WOMEN CENTER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Respondent Aware Women Center for Choice, Inc. (hereinafter "the clinic") is a clinic located in Melbourne, Florida, which provides a variety of reproductive health services, including abortions. In *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994), this Court upheld an injunction entered by the Florida courts to protect the clinic from aggressive protestors, who had systematically impeded patients' access to the clinic and hampered the clinic's provision of health care to those who sought the clinic's services. The primary provision of the injunction upheld by this Court prohibited persons subject to the injunction from "congregating, picketing, patrolling, demonstrating or entering that portion of public right-of-way or private property within [36] feet of the property line of the Clinic." *Madsen*, 512 U.S. at 759. This Court noted that "[t]he 36-foot buffer zone protecting the entrances to the clinic and the parking lot is a means of protecting unfettered ingress to and egress from the clinic, and ensuring that petitioners do not block traffic on Dixie Way. The state court seems to have had few other options to protect access given the narrow confines around the clinic." *Madsen*, 512 U.S. at 769.

Petitioner is an anti-abortion activist who opposes many of the services provided by the clinic and has repeatedly violated the injunction upheld by this Court by entering the 36-foot buffer zone around the clinic in an effort to inhibit individuals from seeking the clinic's services. Workers at the clinic frequently have been forced to call the local police to enforce the injunction against Petitioner. On three separate occasions Melbourne, Florida police officers were forced to physically remove Petitioner from the buffer zone for

violating the terms of the injunction. These three arrests are the basis for Petitioner's present petition for certiorari to this Court.

In the proceedings below, the district court granted summary judgment against Petitioner because Petitioner failed to put forward any evidence to support his claim that the clinic controlled the Melbourne City Police, or that the police were acting as agents of the clinic. *Raney v. Aware Woman Center for Choice, Inc., et al.*, No. 97-1197-CV-ORL-19B (M.D. Fla. filed Feb. 26, 1999), Petitioner's Appendix (hereinafter "Pet. App.") 6a-7a. The district court subsequently denied Petitioner's motion to amend the judgment. Pet. App. 12a. The United States Court of Appeals for the Eleventh Circuit upheld both actions by the district court. *Raney v. Aware Woman Center for Choice, Inc., et al.*, 224 F.3d 1266 (11th Cir. 2000). The court of appeals reaffirmed the district court's finding that the record revealed only that clinic workers had notified the police when its patients needed protection, and had cooperated with the police when necessary to enforce the injunction. *Id.* at 1268. The court of appeals thus affirmed the district court's holding that none of the evidence substantiated Petitioner's claim that the clinic controlled the police. *Id.* The court of appeals further affirmed the district court's rejection of Petitioner's claims under the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (2000) (hereinafter "FACE"). The court held that Petitioner's actions on the sidewalk outside the clinic did not constitute the sort of reproductive health services "in a facility" contemplated by the relevant provisions of the FACE Act. *Id.* at 1269.

REASONS FOR DENYING THE WRIT

Petitioner asks this Court to grant certiorari based on a variety of vague contentions, none of which warrant this Court's review. Petitioner lists a total of ten issues purportedly raised by this case. Each of these issues is phrased cryptically, but no issue can be interpreted in a way that would justify a grant of Petitioner's writ. In the argument pertaining to issues two through six of the petition, Petitioner essentially asks this Court to rewrite its entire abortion rights jurisprudence, starting with *Roe v. Wade*. Petitioner seeks to use decisions that were intended to foster an individual woman's right to choose abortion and other reproductive health services as a tool to facilitate the obstruction of those very services. This is an illogical reading of those decisions, and in any event does not present an issue that falls within the category of cases this Court has deemed worthy of certiorari. *See* S. Ct. Rule 10.

Petitioner's seventh issue asserts that the police who arrested Petitioner were acting as the "agents" of the clinic. This misconstrues the facts of this case, and rests on the invalid legal assumption that simply by protecting one party's rights the police are acting as the "agents" of that party. The only legal support Petitioner can muster on this issue is a fifty-seven year-old Florida Supreme Court decision dealing with the Florida state tort law of false imprisonment and false arrest. Since this issue is entirely a matter of state law, it is therefore outside the scope of this Court's certiorari authority.

Petitioner's first, eighth, ninth, and tenth issues relate to the application of the federal FACE Act to Petitioner's intrusion into the 36-foot buffer zone established by the *Madsen* injunction. The exact nature of Petitioner's claim

regarding FACE is unclear, but he seems to make the bizarre contention that the statutory protection of reproductive health facilities against intrusion should be read to protect those who *do* intrude into those facilities and inhibit patients from obtaining health services. This interpretation is obviously inconsistent with both FACE and the injunction upheld by this Court in *Madsen*, and therefore warrants no further review by this Court.

ARGUMENT

I. THIS COURT'S ABORTION JURISPRUDENCE DOES NOT PROTECT THE INTENTIONAL OBSTRUCTION OF ABORTION SERVICES

In the portion of his Petition discussing issues two through six, Petitioner claims that the decisions below conflict with a number of this Court's abortion rights decisions over the last quarter century. The precise contours of this claim are unclear, but each of the three separate contentions Petitioner makes in support of his position are inconsistent with settled case law.

First, Petitioner argues that the state's interest in protecting the health of pregnant women allows him to violate the buffer zone established by the *Madsen* injunction. *See* Petition at 10. The discussion of health interests in this Court's decisions such as *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), and *Stenberg v. Carhart*, 530 U.S. 914 (2000), to which Petitioner seems to refer, relates to the state's interest in enacting narrowly drawn statutes to protect women from dangerous medical practices or provide women with information supplied by the government to assist them in making health care choices. Nothing in those cases endows

this renegade protester with the right to intrude into a legally protected zone around a particular clinic to provide his own idiosyncratic version of "localized or clinic-specific truthful information . . . to every customer of every abortion clinic." Petition at 11. While the First Amendment protects the right of protesters to present such information outside the confines of the clinic, this Court expressly held in *Madsen* that the First Amendment does not guarantee this sort of protester the right to foist himself on the clinic's patients in the 36-foot buffer zone around the facility.

Petitioner's second contention is that this Court's decisions in *Schenck v. Pro-Choice Network*, 519 U.S. 357 (1997), and *Hill v. Colorado*, 120 S. Ct. 2480 (2000), established a constitutional right to stand at the clinic entrances or "next to the doorway of abortion clinics," Petition at 12, while protesting the clinic's provision of abortion. Neither of these cases upholds that principle or grants such a right.

In *Schenck* this Court overturned an unconstitutionally overbroad "floating buffer zone," but specifically reaffirmed its holding in *Madsen* that

> the governmental interests underlying the injunction in *Madsen* — ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman's freedom to seek pregnancy-related services — also underlie the injunction here, and in combination are certainly significant enough to justify an appropriately tailored injunction to secure unimpeded physical access to the clinics.

Schenck, 519 U.S. at 376 (citations omitted).

Likewise, in *Hill* this Court upheld a Colorado statute that made it a criminal offense to come within eight feet of a person entering or exiting a health facility "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility." Colo. Rev. Stat. S 18-9-122(3) (1999), *quoted in Hill*, 120 S. Ct. 2484 n.1. This statute actually established a much broader zone of limitation on anti-abortion speech than the 36-foot buffer zone approved in *Madsen*, which the Petitioner has repeatedly violated. The Petitioner's notion that *Hill* provides a right of anti-abortion protesters to stand "next to the doorway of abortion clinics" is simply inaccurate.

Petitioner's third contention is a blunt assertion that this Court should overrule *Madsen* because this Court was "wrong" to assume that clinic workers "could be trusted not to misuse a powerful private injunction." Petition at 9. Petitioner claims that he was "threatened and dragged away from a public forum" by "hired gunmen working for the Windles under the pretext of enforcing the *Madsen* injunction." *Id.* The so-called "hired gunmen" were actually officers of the Melbourne Police Department engaged in their official duties. It borders on the frivolous to suggest that the police are acting inappropriately when enforcing an injunction that this Court specifically reviewed, approved, and then reaffirmed less than a year ago in *Hill*. Petitioner's allegations about the application of this Court's other abortion precedents are equally weak and none of these claims come close to articulating a legal issue substantial enough to justify granting Petitioner's writ.

II. PETITIONER'S CLAIM THAT THE POLICE WERE ACTING AS THE "AGENTS" OF THE CLINIC IS LEGALLY INACCURATE AND FAILS TO STATE A FEDERAL CLAIM

Petitioner devotes several pages to the argument that the police who arrested him for violating the *Madsen* injunction were acting as "agents" of Respondents Edward and Patricia Windle. *See* Petition at 6-8. The apparent object of this exercise is to hold Mr. and Mrs. Windle liable under the FACE Act for the actions of the police. Aside from the fact that the police have done nothing to violate FACE (*see* Section III *infra*[1]), Petitioner is mistaken even in his application of basic agency law. The court of appeals noted in its decision that the standard definition of "agency" involves "a fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." *Raney*, 224 F.3d at 1268 (quoting Restatement (Second) of Agency § 1(1) (1958)). The court also noted that:

> The affidavits submitted in support of Raney's claim establish only that city police were deployed to enforce the Madsen injunction on days when abortion procedures were performed at the Woman Center. While the record indicates that the

1. Petitioner has also brought an action against the City of Melbourne, claiming that the city's police department violated his rights under the FACE Act. The District Court for the Middle District of Florida granted the city's motion to dismiss for failure to state a claim, and the Court of Appeals for the Eleventh Circuit affirmed the dismissal. *Raney v. City of Melbourne, Florida*, No. 00-11403 (11th Cir. Nov. 15, 2000).

> Defendants cooperated with the police and notified them when the Woman Center's clients and employees would need protection, it does not suggest that the police were subject to the Defendants' control.

Id.

Respondents did nothing more in this case than any citizen would do if confronted with an intruder: They called the police and cooperated with the officers attempting to enforce the law. Other courts have been confronted with "agency" claims similar to the one Petitioner raises here, and have rejected such claims absolutely. To do otherwise would threaten the very structure of law enforcement. "It would be an unacceptable result to hold that, whenever law enforcement officers act on a citizen's complaint, they are automatically constituted the citizen's 'agent.' The absurdity of such a contention requires no comment." *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913, 917 (D.D.C. 1980). *Accord McGeorge v. Continental Airlines, Inc.*, 871 F.2d 952, 955 (10th Cir. 1989) (rejecting claim that police are agents of private company where record provides no evidence that private company had the power to control the actions of the police officers); *Nelson v. Bulso*, 979 F. Supp. 1239, 1247 (E.D. Wis. 1997) (same); *Robinson v. Town of Colonie*, 878 F. Supp. 387, 408 (N.D. N.Y. 1995) (same).

In another variation on the agency theme, Petitioner argues that the decision below conflicts with a false imprisonment decision issued over fifty years ago by the Florida Supreme Court. *See* Petition at 14. It is unclear why Petitioner is asking this Court to grant a writ of certiorari to review a matter of state tort law. In any event, Petitioner

misconstrues the relevant law. The Florida Supreme Court case relied upon by Petitioner involved a situation in which the defendant swore out a warrant on an individual and then "maliciously and wrongfully" identified the wrong person to the police, who then acted on this information to arrest the innocent victim. *Johnson v. Weiner*, 19 So.2d 699, 699-700 (Fla. 1944).

Nothing of that sort occurred in this case. Petitioner does not deny that he was indeed the person who violated the injunction protecting the clinic, and the police did nothing more than act on accurate information to enforce the law. In these circumstances the Florida Supreme Court has specifically held that the *Johnson* rule does not apply. "[I]t is not enough for instigation that the actor has given information to the police about the commission of a crime, or has accused the other of committing it, so long as he leaves to the police the decision as to what shall be done about any arrest, without persuading or influencing them." *Pokorny v. First Federal Savings & Loan Assoc. of Largo*, 382 So.2d 678, 682 (Fla. 1980) (quoting Restatement (Second) of Torts, § 45A, Comment (c) (1965)). The Court further recognized that the public policy of encouraging citizens to assist the police required that the public be immune from liability in the absence of the sort of intentionally fraudulent misinformation evident in *Johnson*.

> Prompt and effective law enforcement is directly dependent upon the willingness and cooperation of private persons to assist law enforcement officers in bringing those who violate our criminal laws to justice. . . . Private citizens should be encouraged to become interested and involved in

> bringing the perpetrators of crime to justice and not discouraged under apprehension or fear of recriminations.

Pokorny, 382 So. 2d at 682 (quoting *Manis v. Miller*, 327 So. 2d 117 (Fla. 2d DCA 1976)).

In short, Petitioner's misapplication of a state-law issue regarding citizen liability for assisting police does not justify the grant of a writ of certiorari by this Court.

III. THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT DOES NOT PROTECT THE RIGHT OF PROTESTERS TO INTRUDE INTO HEALTH CLINICS AND IMPEDE PATIENT ACCESS TO THOSE CLINICS

Petitioner's final set of claims pertains to the application of the FACE Act. Petitioner claims that the FACE Act protects his intrusion into the buffer zone defined by the *Madsen* injunction. Stripped to its essence, Petitioner seems to argue that a federal statute enacted to protect reproductive health clinics from physical obstruction and harassment bars enforcement of an injunction issued for the purpose of protecting Respondent clinic from such physical obstruction and harassment. This facially absurd claim depends on the equally absurd premise that someone trespassing on the property of a reproductive health clinic for the purpose of inhibiting that clinic's activities is nevertheless protected by the federal statute because that person has intruded into a "facility" as defined by the FACE Act.

The FACE Act does not cover the behavior of the Petitioner because he was not "in a facility" as defined by

the statute. As the court of appeals noted in rejecting Petitioner's assertions below, a FACE Act claim can be brought only by someone "involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services." 18 U.S.C. § 248(c)(1)(A), *quoted in Raney*, 224 F.3d at 1268. Petitioner was not "involved in providing or seeking to provide" services at the facility where he was arrested; he was engaged in behavior intended to *prevent* the provision of services at that facility. Petitioner argues that the FACE Act definition of "facility" includes "the walled portion around the clinic and the parking lot and the sidewalks in the *Madsen* buffer zone." Petition at 8. With regard to doctors, workers, and patients at the clinic, this area may well be part of the "facility" protected by the provisions of the FACE Act. But Petitioner was not a doctor, worker, or patient at the clinic, nor was he otherwise associated with the clinic in any way. Instead, he was attempting to thwart the work of the clinic, in direct violation of an injunction, and was arrested for that reason. To construe the FACE Act to protect his behavior would turn the statute on its head and convert a statute intended to shield clinics from hostile attacks into a sword for those who would engage in such attacks.

Petitioner devotes two entire sections of his Petition to the argument that the court of appeals "has completely rewritten F.A.C.E.," Petition at 15, and "deprived the counselor of F.A.C.E. protection because of his volunteer status," Petition at 16. Petitioner apparently misunderstands the thrust of the court of appeals' holding. The court of appeals simply recognized that the FACE Act was enacted to protect institutional providers of reproductive health care, including "a hospital, clinic, physician's office, or other facility." 18 U.S.C. § 248(e)(1). Petitioner does not fall within

this category because he is an individual who is "not *attached to* recognized providers of reproductive healthcare." *Raney*, 224 F.3d at 1269 (emphasis added).

Nothing in the court of appeals opinion indicates that the statute would not cover a volunteer who *is* attached to a reproductive health facility and is "involved in providing or seeking to provide, or obtaining or seeking to obtain, services." 18 U.S.C. § 248(c)(1)(A). This is the holding of *United States v. Dinwiddie*, 76 F.3d 913 (8th Cir.), *cert. denied*, 519 U.S. 1043 (1996), which Petitioner cites in support of his position. The precise language used by the Eighth Circuit, however, indicates why this case does not help Petitioner's cause. The Eighth Circuit noted that

> A building that houses an abortion clinic "provides" reproductive-health services because it is an integral part of a business in which abortions are performed and pregnant women are counseled. The same logic applies to workers at an abortion clinic — [the clinic doctor] could not do his job without either Planned Parenthood's "facility" or its workers.

Dinwiddie, 76 F.3d at 927. *Dinwiddie* does not support Petitioner's claim because he is an unwanted intruder into the facility in this case; he is not "an integral part of a business in which abortions are performed and pregnant women are counseled." *Id.* The Eleventh Circuit Court of Appeals opinion below is entirely consistent with this conclusion.

If Petitioner were attached to an ongoing operation that provided reproductive health services of the type he advocates, and if his activities were undertaken inside a

facility devoted to that purpose, and if someone broke into that facility or attempted to obstruct that facility's operations, then he could possibly claim the protection of the FACE Act. *See* H. Rep. No. 103-306 103rd Cong., 1st Sess. 3 (1993): "[B]y covering reproductive health services and not merely abortion, the bill would apply to blockades by pro-choice advocates — should such blockades occur — outside clinics engaged in pro-life counseling or providing abortion alternatives." In contrast, using Petitioner's theory of FACE in the scenario described in the House Report on the FACE Act, pro-choice advocates would be permitted to enter a pro-life facility and provide information about abortion to the clients of that facility over the objections of the facility's owners and operators. Petitioner's reading of the FACE Act is a recipe for anarchy. Under his interpretation, all clinics would be compelled to grant access to anyone with a desire to "counsel" patients even if that advice encouraged the patient to ignore the opinions of the clinic's own doctors and staff. In contrast, the only logical way to read the FACE Act's protection of persons providing services in a "facility" is to assume that the statute protects those persons working with a particular facility to promote its purposes. The Act cannot logically be read to protect the hostile activities of individuals such as Petitioner, who are attempting to prevent the facility from rendering services, and whose specific intent is to inhibit its safe and efficient operation.

CONCLUSION

The arguments raised by Petitioner do not warrant review by this Court. The Petition for Certiorari should be denied.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

Meredith T. Raney, Jr.,

Petitioner,

v.

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., and Patricia B. Windle,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY TO BRIEF IN OPPOSITION

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QUESTIONS RAISED BY BRIEF IN OPPOSITION

Should a myriad of irrelevant issues and fabrications of law and fact presented to the Court in the Brief in Opposition distract the Court from issuance of the writ in this qualifying case of exceptional national importance?

Should the Court issue a writ of certiorari because of fabrications and distortions of law and fact made by petitioner's adversaries?

NOTE TO THE UNITED STATES SUPREME COURT OF RELATED PETITIONS ALREADY FILED WITH THE COURT:

Jane Roe, II v. Aware Woman Center For Choice, Inc., et al.,
Supreme Court number 00-1301

Meredith T. Raney, Jr. v. City of Melbourne, Florida,
Supreme Court number 00-1350

Ray Sienkiewicz v. John McDougall, individually, et al.,
Supreme Court number 00-1365

Ray Sienkiewicz v. Larry Hart, individually, Charles Wilson, individually, Janet Reno, individually, William J. Clinton, individually, and Jill Babyack,
Supreme Court number 00-1419

ELEVENTH CIRCUIT

Ray Sienkiewicz anticipates the filing before the end of March, 2001, of a petition for writ of certiorari to review the case of:

Ray Sienkiewicz v. John McDougall, et al.
United States Court of Appeal number 00-13805-II

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FIRST REASON FOR GRANTING THE WRIT

A MYRIAD OF IRRELEVANT ISSUES AND FABRICATIONS OF LAW AND FACT PRESENTED TO THE COURT IN THE BRIEF IN OPPOSITION SHOULD NOT DISTRACT THE COURT FROM ISSUANCE OF THE WRIT IN A QUALIFYING CASE OF EXCEPTIONAL NATIONAL IMPORTANCE.

The true facts and existing law of this case are not complicated. The respondents have conceded the essential elements of the case: Meredith T. Raney was, at the times in question, within the boundaries of the Aware Woman Center For Choice facility where his F.A.C.E.-protected rights were violated by respondents' procurement of the Melbourne City Police to accomplish this end.

The correction of the grievous mistake in the Court of Appeals justifies the issuance of the writ of certiorari, not so much because this particular referral counselor was wronged, but because the tragic decision below will be the cause of death and injury of a great many desperate girls and young women. These people deserve all the help they can get in dealing with crisis pregnancies. This Court has long been the champion of distraught pregnant girls and women and should not now turn its judicial back to those millions who require the Court's continued protection.

Additionally, there is much amiss within the federal judiciary below. Those problems also justify the issuance of the writ.

But first, Meredith Raney would like to erase any possible conflict between the lawful application of F.A.C.E requested by his civil action and the convoluted proposals furnished by Aware Woman Center For Choice in its recent

brief. There is a "smoke and mirrors" element in the Brief in Opposition which will be addressed because of the great importance of this case to so many young women throughout our nation.

(a) The Florida Supreme Court test for determining liability for misuse by a business operator of local police has no application to the misuse by Aware Woman of the Melbourne Police.

No. Not only has *Johnson v. Weiner*, 19 So. 2d 699, (1944), supplied the requisites to determine responsibility for misuse of local police, the test was approved by the Middle District of Florida in *Gilbert v. Sears*, 899 F.Supp. 597 (M.D.Fla. 1995). The Court of Appeals decision creates a conflict with the Florida Supreme Court by elevating guard-dog responses by police to a fiduciary relationship just to exonerate an abortion business from F.A.C.E. liability. Aware Woman was shown to control the police stationed on-site and is liable for procuring them as instruments to violate Meredith Raney's F.A.C.E. rights.

(b) The Counselor's civil action was brought for false arrest.

No. The violations of F.A.C.E. occurred when the police attempted to threaten and intimidate the counselor. There is no allegation in the Complaint about any arrests. While arrests did occur, these events always took place after the F.A.C.E. violations occurred. No civil actions have been brought against Aware Woman Center For Choice for false arrest, malicious prosecution, false imprisonment or the like: only for F.A.C.E. violations. 18 U.S.C. §248 (a)(1) requires only attempted intimidation of the counselor.

(c) The Counselor's arrests prove that he was in the

facility unlawfully.

No. Arrests in the United States of America do not automatically result in conviction. Our Constitution is plain: no one shall be deprived of liberty without due process of law; due process of law requires a fair trial. U.S. Constitution, Amend. V and Amend. VI.

Sadly, there was a brief time in Melbourne, Florida when there was an exception to the foregoing fundamental rule of law made by the local court for those citizens who were *personae non grata* of the Aware Woman Center For Choice. However, the Florida judges were eventually nauseated by this gross human-rights abuse and rebelled against further participation in the farce. Thus, while it is true that Meredith T. Raney, Jr. was arrested for disobeying the *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994), injunction after each of the three violations of his F.A.C.E. rights had occurred, he was exonerated of any wrongdoing. All three of the charges were dismissed or dropped. Meredith Raney was lawfully providing F.A.C.E.-protected referral services in the Aware Woman facility and should never have been threatened by Aware Woman.

(d) Meredith T. Raney was enjoined by the United States Supreme Court from entering the *Madsen* buffer zone.

No. In its decision approving the *Madsen* (*supra*) injunction, this Court applied it to several named persons and organizations plus those acting in concert with them - none of which included Meredith Raney.

The records show that none of the named parties were ever charged with contempt of court for violating the *Madsen* (*supra*) injunction. This awesome weapon was misused by the Aware Woman Center For Choice to intimidate, threaten,

and obstruct all persons lacking its approval to enter the buffer zone. These victims included a neighbor picking up his mail and another neighbor out for a stroll on the public sidewalk. These people were arrested. And in *McKusick v. City of Melbourne*, 96 F.3d 478 (11th Cir. 1996), a young woman, seeking repentance for an abortion, was threatened with arrest for reading her Bible and praying on the sidewalk in the buffer zone.

None of these people were in contempt of court. None of them had violated an injunction approved by this Court. Yet all suffered from the tyranny and arrogance of Aware Woman Center For Choice. In the case of this pro-life referral counselor, such abuse constituted violations of F.A.C.E.

(e) Meredith T. Raney, Jr. is a protestor and anti-abortion activist and so is excluded from F.A.C.E. protection.

No. Meredith T. Raney, Jr. would be the first to admit that he abhors services at Aware Woman Center For Choice such as the forced abortion where Jane Roe, II was brutally held on the table, screaming for help and begging for her life, while the abortionist slashed her uterus and colon, nearly murdering her in this barbaric operation. Such opposition, in a civilized society, should be shared by all decent human beings. The counselor's concern that other women should not be treated likewise does not pre-empt him from F.A.C.E. protection as a "protester" or "anti-abortion activist".

Since such mis-designations by abortion providers of those with whom it disagrees are common, Meredith Raney had gone to considerable lengths in the body of his Complaint to carefully spell out the categories of pro-life persons at abortion clinics; he explained that demonstrators and

protestors and those in prayer are not covered under F.A.C.E.; however, referral counselors such as himself do have this federal protection as providers of referral and counseling services in accord with 18 U.S.C. §248 (e) (5).

(f) The sidewalk in the buffer zone is not a *forum* area.

No. The concept of *forum* rights are as old as civilization and were certainly not the creation of this Court in *Schenck v. Pro Choice Network*, 519 U.S. 357, or *Madsen* (*supra*). *Marsh v. Alabama*, 66 S.Ct. 276 (1946), reminds us that sidewalks which have been opened to interstate commerce contain at least limited opportunities for those who are unwelcome and unwanted to provide written information in a peaceful manner. Grace Marsh was certainly uninvited, unwanted, and unwelcome in Chickasaw, Alabama. *Marsh v. Alabama* (*supra*).

Meredith Raney availed himself of the *forum* rights to lawfully provide referral counseling in the Aware Woman facility. This Court specifically stated that such rights would persist in the buffer zone injunction. *Madsen* (*supra*) at page 2524. Further, this Court provided the standards for behavior for pro-life counselors in the *Schenck* (*supra*) decision.

At no time, though, has Meredith Raney claimed that his rights in the buffer zone were created by the Supreme Court. The concept of *forum* rights predates the existence of this country. We have protected such rights as part of our heritage. Now, F.A.C.E. is part of the legal arsenal available to pro-life counselors in abortion facility *forum* areas providing reproductive health services described in 18 U.S.C. §248 (e) (5).

(g) Meredith T. Raney, Jr. cannot be protected under

F.A.C.E. because his referral services are not welcome or wanted by Aware Woman Center For Choice.

No. The referral services and life-saving assistance of the rescue squad in *Jane Roe, II v. Aware Woman et al.*, Supreme Court number 00-1301, were not wanted or welcome by the abortionist or the clinic. Yet it is likely that Jane Roe, II would have died in agony had Aware Woman further delayed the receipt by this young woman of those services.

The United States Supreme Court has insisted that the information provided to women considering an abortion be truthful. *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992). No rational person will believe that any worker at Aware Woman told Jane Roe, II that should she change her mind about getting an abortion, that she would be raped and butchered.

Nor would any rational person believe that a worker at an abortion clinic which was spreading AIDS and other deadly infections because of lack of sterilization of the abortion instruments would tell any potential customer the truth of this horrible risk to life and health.

For that matter, there is nothing about the name of this particular clinic which would warn a naive girl from hundreds of miles away that she was being brought to an abortion clinic for a procedure that she did not want unless a pro-life counselor such as Meredith Raney were there at the entrance to warn her of this danger. If "welcome" or "wanted" are ever to be made a condition of F.A.C.E. protection, then the persons making such determinations cannot be clinic owners.

(h) The presence of F.A.C.E. protected pro-life counselors is not essential to the proper operation of an abortion clinic.

No. Federal Courts have approved of FA.C.E. protection for a variety of persons working in abortion facilities including janitors. *U.S. v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996). To date, all such persons have been those that somehow contributed to the financial success of the business.

This pro-life counselor knows that there can be no true choice of an abortion by a girl intentionally deprived of the truthful information she requires, not only of the risks at a particular abortion clinic, but also of the various resources and alternative services available to her in the specific community. Such a concept is consistent with the rulings of the Supreme Court, from *Roe v. Wade*, 35 L.Ed. 2d 147 (1973), to *Stenberg v. Carhart*, 147 L.Ed. 743 (2000), and particularly in *Casey* (*supra*) Thus, there could be no proper operation of the Aware Woman Center For Choice facility without the effective presence of one or two pro-life referral counselors in the *forum* area of the facility.

i. Pro-abortion counselors are not protected at pro-life facilities.

No. An "equal rights" application will ensure that pro-abortion referral counselors providing referral information from the *forum* areas of adoption agencies will likewise be protected when complying with *Schenck* (*supra*) standards.

None of the numerous hoops and hurdles proposed by Aware Woman as obstacles to issuance of the writ have any sound basis in law or fact. For instance, the Aware Woman personnel were never "forced" to call the police. The truth is that the police were stationed on the premises already and knew what to do if they saw this pro-life counselor.

SECOND REASON FOR GRANTING THE WRIT

THE COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE OF FABRICATIONS AND DISTORTIONS OF LAW AND FACT MADE BY SOME OF PETITIONER'S ADVERSARIES.

In virtually all litigation the adversaries are the opposing parties named in the litigation. Regrettably, some of the federal judges in the courts below have chosen to become adversaries in this case.

Many a young lawyer has experienced feelings of great bitterness when in some dusty small claims courtroom an aging shyster with no regard for the truth has prevailed by intentionally misstating the facts and the law of the case. Such anger has been directed at a worn-out lawyer who may be unable to feed his family were it not for such chicanery.

Those harsh feelings should be reserved for the judges who knowingly allow this misuse of their courts. Worse yet are the rare instances in which the judge, no matter what her or his motivation, takes an active role in such malfeasance.

There is the present instance where the district judge was shown, literally, that the Melbourne City Police were used as stationary guard dogs to threaten and intimidate those persons not in favor with the Aware Woman personnel. Incredibly, the district judge then proclaimed that these "guard-dog" officers were in fact behind the wheels of their police cars, driving up and down Melbourne's roads, on routine patrol. Apparently the district judge felt that such a fabrication was needed to enable her to rule in favor of Aware Woman.

Another time, the same district judge pointedly ignored

the extensive crisis pregnancy counseling training which Meredith Raney had obtained and called him "a self-proclaimed 'counselor'". *Raney v. City of Melbourne*, Supreme Court number 00-1350.

The judges at the Court of Appeals have also chosen adversarial roles. For instance, an Eleventh Circuit panel has sneeringly called Mr. Raney "an admitted anti-abortion activist". *Raney v. City of Melbourne* (*supra*).

In light of the slurs and fabrications by the federal judges, the distortions of the Brief in Opposition are pale by comparison.

Federal judges are bound by the Constitution to a code of conduct succinctly called "good Behaviour". U. S. Constitution, Article III, Section 1. No reasonable person would believe that judicial fabrication of material facts is good behavior. Moreover, there is a blatant appearance below of impropriety which should be corrected by this Court. *Liteky v. United States*, 114 S.Ct. 1147 (1994).

When it comes to rewriting the F.A.C.E. Act in order to secure an outcome adverse to Meredith Raney, the opposing attorneys are greatly overshadowed by the appellate judges. Some of the additions and requirements added to F.A.C.E. by the Eleventh Circuit panel are as follows:

1. "ATTACHED"
2. "CREDENTIALED"
3. "HEALTHCARE"
4. "PROFESSIONALS"
5. "RECOGNIZED"
6. "TRAINED"
7. "UNREGULATED"
8. "VOLUNTEER"

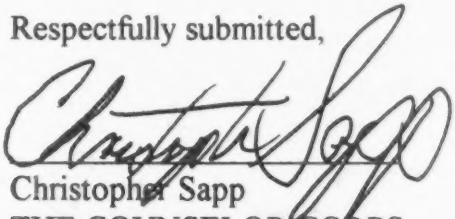
Such revisions are relegated by the Constitution to our Congress. Article I Sections 1 and 8. What has happened here is not "interpretation" but a wholesale redrafting of 18 U.S.C. §248 apparently so that favored parties and the abortion industry are protected from the consequences of their wrongdoing.

Whether the judges below were motivated by personal ambition, bigotry, blackmail, greed, or simply an over-zealous desire to maximize the number of abortions, voluntary and involuntary, that are done nationwide, the end result of their misconduct has been a nationwide threat to the lives and well-being of millions of pregnant young women, now and for years to come.

CONCLUSION

Meredith T. Raney, Jr. respectfully requests that this Court grant a writ of certiorari not so much because of his need for protection under F.A.C.E. but because of the millions of girls and young women who deserve all of the love and help offered by pro-life referral counselors when dealing with crisis pregnancies. The decisions may be the most important ones they will ever make. Their lives and health often hang in the balance. Therefore, it is of greatest national importance that pro-life referral counselors receive the full protection of F.A.C.E. Additionally, the evil cancer of judicial impropriety, or at least its appearance, should be removed from this case.

Respectfully submitted,



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